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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-00-194-50488

Office: Vermont Service Center

Date: JAN 22 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a wholesaler and distributor of airline tickets and travel packages with 10 staff employees and a contractual force of from 15 to 20 people during peak periods. The petitioner states that it has an approximate gross annual income of \$1.3 million. It seeks to employ the beneficiary as an accountant for one year and five months. The director determined that the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel submits a brief and photocopies of various documents previously submitted by the petitioner.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the petitioner had failed to show that the duties of the proffered position require a minimum of a bachelor's degree in accounting. The director did not find the duties described by the petitioner to be indicative of a position that only encompasses accounting tasks. On appeal, counsel argues that the duties of the offered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Conducts independent audits for management for review effectiveness of controls & operations;

2. Reviews company records to insure compliance with applicable laws and proper recording of transactions;
3. Analyzes data obtained for evidence of deficiencies in controls, duplication of effort, extravagance, fraud, or lack of compliance with the company's established policies and procedures;
4. Inspects and, if need be, revises accounting systems to insure their efficiency and protective value; and
5. Prepares a periodic report of findings and recommendations to top management and, may conduct special studies to discover fraud and propose controls for their prevention.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The Service does not agree with counsel's argument that the beneficiary is a "corporate accountant," an occupation that would normally require a bachelor's degree in accounting or a related field. In its Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 20, the Department of Labor (DOL) describes the job of a management accountant as follows:

Management accountants - also called industrial, corporate or private accountants - record and analyze the financial information for the companies for which they work. . . . They are usually part of executive teams involved in strategic planning or new product development. . . . They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities.

The record reflects that the petitioner, which is a wholesaler and distributor of airline tickets and travel packages, employs approximately 10 persons and has a gross annual income of \$1.3 million. The business in which the beneficiary is to be employed does not require the services of a corporate accountant who is part of an executive decision-making team. Furthermore, there is no evidence that the position offered includes complex or advanced accounting duties such as the preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position requires an individual with a knowledge of sophisticated accounting techniques normally associated with the duties of a corporate accountant.

The petitioner's description of the duties of the proffered position provides little impression of the beneficiary's actual day-to-day duties. For example, the petitioner has provided no indication as to the amount of the beneficiary's time to be spent on the various activities described above. The petitioner's relatively small size and scope, while not dispositive, strongly suggest that the majority of the beneficiary's activities will combine those of an accounting clerk and an auditing clerk in a small business establishment, with some entry level accounting duties. A review of the Handbook at page 318 finds no requirement of a baccalaureate degree in a specialized area for employment as a bookkeeper or records clerk. The usual requirement is a high school diploma or its equivalent. A higher level of training is favored but not required. Such training is available in community colleges or schools of business. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of regulations.

Counsel argues on appeal that the Department of Labor has determined in its Dictionary of Occupational Titles (DOT) that the proffered position is a specialty occupation. Counsel further argues that the Service has previously found in Matter of Arjani, 12 I&N Dec. 649 (Comm. 1967), that the position of accountant qualifies as a profession under the statute and regulations in effect at that time. However, the Service does not contest the fact that a position as an accountant requires a bachelor's degree in accounting. Rather, the Service disagrees with counsel's argument that the duties of the proffered position are those of an accountant. As stated above, in this case, the proffered position

appears to be that of an accounting clerk or auditing clerk with some elementary accounting duties.

Furthermore, a reference in the DOL's DOT, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as accounting, for the offered position. In fact, according to the copies of the petitioner's 1997 and 1998 federal income tax returns, the petitioner's tax returns are prepared by independent accountants.

Additionally, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals with a baccalaureate degree in parallel positions.

Finally, while counsel argues on appeal that the proffered position qualifies as a specialty occupation because of the specialized and complex nature of the beneficiary's proposed duties, neither counsel nor the petitioner has submitted any independent evidence to corroborate this assertion.

Counsel claims the petitioner has offices in New York, Washington, Chicago, Daly City, and the Philippines, and submits the petitioner's 1997 and 1998 federal income tax returns for its Washington office and the 1998 federal income tax return for its New York office. Neither counsel nor the petitioner has submitted any evidence that the petitioner has additional offices in Daly City, Chicago, or the Philippines. Furthermore, the petitioner's federal income tax returns have no apparent relation to the duties of the proffered position and as such do not serve to establish

that the duties of the proffered position are those of an accountant.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of a bookkeeper or accounting clerk, rather than an accountant. According to the DOL at page 318 of Handbook, the usual requirement for a bookkeeping or accounting clerk is a high school diploma or its equivalent. A higher level of training is favored but not required, and such training is available in community colleges or schools of business. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.